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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,926	09/29/2003	Gregory L. Sundberg	387486	7372
42074 7590 03/04/2011 FAEGRE & BENSON LLP PATENT DOCKETING - INTELLECTUAL PROPERTY (32469) 2200 WELLS FARGO CENTER 90 SOUTH SEVENTH STREET MINNEAPOLIS, MN 55402-3901				
EXAMINER				
EVANSKO, GEORGE ROBERT				
ART UNIT		PAPER NUMBER		
3762				
NOTIFICATION DATE		DELIVERY MODE		
03/04/2011		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### Office Action Summary

**Application No.**

10/673,926

**Applicant(s)**

SUNDBERG, GREGORY L.

**Examiner**

George R. Evanisko

**Art Unit**

3762

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 January 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 3-6, 8-11, 13-22 and 24-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-6, 8-11, 13-22, and 24-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### **Continued Examination Under 37 CFR 1.114**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/18/11 has been entered.

### **Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 8-10, 19, and 24-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Peers-Travarton (4667686). Peers-Travarton shows housing, 12, piston, 40, helix coupled to piston (e.g. figure 2, helix 30 coupled on recess portion), with a housing portion including a helical segmented guide, 32, that rides along the drive mechanism/helical drive grooves (e.g. figure 2, col. 4, lines 10-15), and includes a sleeve of radiopaque material coupled to the housing through the lead. In addition, Peers-Travarton shows the recess in figure 2 as the area right below/above numerals 52 and 46 that is recessed from the large piston, 40, with the helix above the outer surface of the piston. Peers-Travarton's recess does extend inward from the outer surface (as does any recess) of the large piston outer surface, 40.

Claims 1, 8-10, 14-17, 19, and 24-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Vachon (5531780). See, for example, figures 4-9 and corresponding description of Vachon that show the piston, helix coupled to the piston, and guide riding in the drive grooves of the helix/first portion of the helix. In addition, figures 4-9 show the recess in the helix as being the indented part of the piston that has a smaller diameter than the largest diameter of the piston. For example, in figure 4, the piston is element 90 (and other parts of piston such as 162, 88, etc), with recess immediately to the left of element 90, where helix 82 is in the recess and above the outer surface of the piston. Vachon's recess does extend inward from the outer surface (as does any recess) of the large piston outer surface, 90.

### **Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-6, 11, 13, and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peers-Travartan in view of Bisping (4282885).

See below for the rest of the rejection.

Claims 3-6, 11, 13, 18, and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vachon in view of Bisping (4282885).

Peers-Travarton or Vachon discloses the claimed invention except for disclosing part of the fixation helix in a helical recess of a piston, separated by non-recessed portions. Bisping teaches that it is known to use a helical recess on the piston for the helix, separated by non-recessed portions to provide stability to the helix during implantation and extraction. Bisping also teaches that it is known to put nearly the entire part of the fixation helix wire in a helical recess of a piston, separated by non-recessed portions to provide stability to the helix during implantation and extraction (note, the claim is an open ended comprising claim and 1/3 to 1/2 of the wire is in the recess when the entire helix wire is in the recess). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include in the medical lead as taught by Peers-Travarton or Vachon, the use of the fixation helix in a helical recess of a piston, separated by non-recessed portions as taught by Bisping since such a modification would provide an implantable lead with part of the fixation helix in a helical recess of a piston, separated by non-recessed portions to provide the predictable results of stability to the helix during implantation and/or extraction.

In the alternative for claims 5, 6 and 21, Peers-Travarton or Vachon in view of Bisping discloses the claimed invention but does not disclose expressly 1/3 to 1/2 of the diameter of the helix within the piston or the recess having a first width less than a wire diameter. It would have been an obvious matter of design choice to a person of ordinary skill in the art to modify the lead as taught by Peers-Travarton or Vachon in view of Bisping with 1/3 to 1/2 of the a diameter of the helix within the piston or the recess having a first width less than a wire diameter, because Applicant has not disclosed that 1/3 to 1/2 of the a diameter of the helix within the piston or the recess having a first width less than a wire diameter provides an advantage, is used for a

particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the helical fixation within the recess as taught by Peers-Travatton or Vachon in view of Bisping, because it securely holds the wire during implantation.

Therefore, it would have been an obvious matter of design choice to modify Peers-Travatton or Vachon in view of Bisping to obtain the invention as specified in the claim(s).

For claim 18, the Examiner has interpreted the claim similar to the applicant's disclosure as being one recess having multiple portions, which Bisping shows.

Claims 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peers-Travatton discussed above. Peers-Travatton discloses the claimed invention except for the conductor electrically connected to the piston, the piston electrically connected to the helix, and the active helix. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the implantable heart lead as taught by Peers-Travatton, with the conductor electrically connected to the piston, the piston electrically connected to the helix, and the active helix since it was known in the art that medical leads use a conductor electrically connected to the piston, piston electrically connected to the helix, and active helix to provide the predictable results of a helical fixation lead that actively directly stimulates cardiac tissue at the fixation site and allows for bipolar pacing and sensing.

Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peers-Travatton in view of Bisping (4282885). Peers-Travatton discloses the claimed invention except

for disclosing part of the fixation helix in a helical recess of a piston, separated by non-recessed portions. Bisping teaches that it is known to put nearly the entire part of the fixation helix wire in a helical recess of a piston, separated by non-recessed portions to provide stability to the helix during implantation and extraction (note, the claim is an open ended comprising claim and 1/3 to 1/2 of the wire is in the recess when the entire helix wire is in the recess). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include in the medical lead as taught by Peers-Travartan, the use of the fixation helix in a helical recess of a piston, separated by non-recessed portions as taught by Bisping since such a modification would provide an implantable lead with part of the fixation helix in a helical recess of a piston, separated by non-recessed portions to provide the predictable results of stability to the helix during implantation and extraction.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Vachon as discussed above. The modified Vachon discloses the claimed invention except for the guide being a segmented helical guide. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the implantable lead as taught by the modified Vachon, with the guide being a helical segmented guide since it was known in the art that implantable leads use a guide being a helical segmented guide to provide the predictable result of easily and smoothly advancing the helix from the lead.

#### **Response to Arguments**

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection necessitated by amendment. In addition, the argument

that the amendments were agreed to overcome the art is not persuasive. The interview summary does not address this agreement and the Examiner rarely, if ever, agrees that proposed claim amendments overcome the art since a closer reading of the art is always necessary (and these amendments do not overcome the art).

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George R. Evanisko whose telephone number is 571 272 4945. The examiner can normally be reached on M-F 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Niketa Patel can be reached on 571 272 4156. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George R Evanisko/  
Primary Examiner, Art Unit 3762



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